

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4850 of 1984

Date of decision: 9-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT OPHTHALMIC ASSISTANTS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner is an association of Ophthalmic Assistants working in the Government Hospitals. The grievance of the petitioner association is that the appointments made by respondent No.2 to the post of Optometrist from among the list of candidates received from the Employment Exchange is illegal and therefore be declared as bad in law and of no effect. Further prayer has been made that respondent No.2 may be directed to advertise the posts of Optometrist in news papers and to consider the case of all Ophthalmic Assistants who may apply in pursuance to the advertisement, if they are otherwise eligible.

2. The first prayer made by the petitioner Association is not acceptable for the reasons briefly stated hereunder. In the case of R.K.Jain vs. Union of India, AIR 1993 SC 1769 the Supreme Court held that in service jurisprudence it is settled law that it is for the aggrieved persons to assail the legality of the offending action. In the present case the association has filed the petition which could not have been a candidate for appointment to the post of Optometrist. Members of the Association may be persons said to be aggrieved by the selection made on the posts and not the Association. The members of the Association could have individually assailed the legality of the appointments made, which is not the case here. The appointments have been assailed by persons who could not be a competitor for the same. Secondly, the appointees on the post of Optometrist have not been impleaded as party to the special civil application. Challenge has been made to the appointment of undisclosed persons. Any decision given behind the back of such undisclosed persons will be against the fundamental principles of natural justice. In fact, for grant of the first relief too the appointees on the post of Optometrist were necessary party. The petitioner has not joined any of the appointees as party to the petition and as such in absence of those persons who are necessary party in the present case this court cannot adjudicate on the validity of their appointment. This writ petition suffers from the defect of nonjoinder of necessary parties. Any decision given in the absence of those persons will be against the principles of natural justice. This Court sitting under Article 226 of the Constitution of India will not pass an order which may be in violation of the principles of natural justice.

Net result of the aforesaid discussion is that the first prayer made by the petitioner deserves to be rejected.

3. So far as the second prayer is concerned, the appointment has to be made in accordance with the recruitment rules framed by the respondents. Petitioner has produced copy of notification dated 2-9-1983 under which rules known as "the Optometrist Class III of Government teaching Hospital in the Department of Medical Education & Research, Gujarat State, Recruitment Rules, 1983" were published. As per Rule 2 of the said Rules appointment to the post of Optometrist, Class III, of Government Teaching Hospitals in the Department of Medical Education and Research shall be made by direct selection. Eligibility criteria for appointment by selection to the aforesaid post have been given in Rule 3. In the Rules it has been provided how the applications have to be invited for making appointment for direct selection to the post of Optometrist, Class III. Learned counsel for the respondents contended that normally the Department is calling names from the employment exchange by sending requisition. Names are also called for from the Social Welfare Department for reserves posts. Grievance of the petitioner is that many of the Ophthalmic Assistants who are eligible for appointment to the post of Optometrist, Class III, have been deprived of their right of consideration when names have been called from the employment exchange. The names of these persons who are in employment have been struck off from the registers of employment exchange. Secondly names of persons who are in employment are not registered by the employment exchange. Counsel for the respondents has given out that names of employed persons could be registered with the employment exchange with the 'no objection' of the department. I do not consider to go into this question any more for the reason that Article 16 confers fundamental right of consideration to all eligible candidates for appointment in public service. The court is concerned with those class of persons who are working in the cadre of Ophthalmic Assistants who should not be deprived of their right of consideration if they are otherwise eligible for appointment to the post of Optometrist, Class III. The respondents shall take the necessary steps to ensure that all eligible Ophthalmic Assistants are given opportunity to compete in the selection to the post of Optometrist, Class III, as and when they decide to make selection on the post of Optometrists in future.

4. In the result this special civil application fails and the same is dismissed. Subject to the

aforesaid observations, rule discharged. No order as to costs.

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